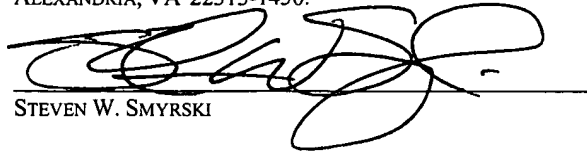


Ifw



**PATENT**  
Atty Docket No. AMO0007

I CERTIFY THAT ON OCTOBER 28, 2005, WHICH IS THE DATE I AM SIGNING THIS CERTIFICATE, THIS CORRESPONDENCE AND IDENTIFIED ENCLOSURES ARE BEING DEPOSITED IN THE UNITED STATES POSTAL SERVICE, POSTAGE PAID FIRST CLASS, IN AN ENVELOPE ADDRESSED TO: OFFICE OF INITIAL PATENT EXAMINATIONS, FILING RECEIPT CORRECTIONS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

  
STEVEN W. SMYRSKI

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of  
  
MARK E. STEEN, ET AL.  
  
Title: SYSTEM AND METHOD FOR MODULATED  
SURGICAL PROCEDURE IRRIGATION AND  
ASPIRATION  
  
Serial No.: 10/619,088  
  
Filed: July 14, 2003

Group Art Unit: 3763  
  
Examiner: Unassigned

**REQUEST FOR CORRECTED FILING RECEIPT**

Office of Initial Patent Examinations  
Filing Receipt Corrections  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.

Sir:

In reviewing the Updated Filing Receipt for the above-entitled application, a copy of which is enclosed as Exhibit A, Applicants note the "Power of Attorney" is incorrectly indicated to be "None."

Exhibit B is a copy of the Declaration and Power of Attorney for Patent Application which was filed on December 8, 2003.

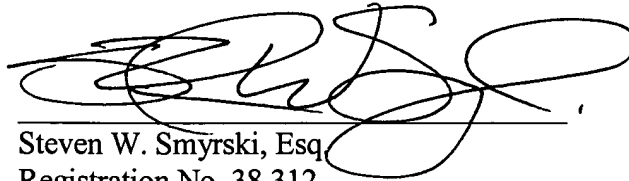
On page 4 of the Declaration, under Appendix A, the following attorneys/agents were noted thereon:

“Steven W. Smyrski and Paul Livesay, of SMYRSKI & LIVESAY, LLP, with offices located at 3310 Airport Aveune, SW, Santa Monica, California 90405, telephone 310.397.9118, and Peter J. Gluck, of ADVANCED MEDICAL OPTICS, INC., with offices located at 1700 E. St. Andrew Place, Santa Ana, California 92705, telephone (714) 247-8516;”

Applicant requests correction of the Updated Filing Receipt to update the Power of Attorney from “None” to the above-referenced attorneys Smyrski, Livesay and Gluck.

Applicant believes that no fee is required for this change. However, if a fee should be required, the Commissioner is hereby authorized to charge the fee or credit any overpayment to Deposit Account 502026.

Respectfully submitted,

  
Steven W. Smyrski, Esq  
Registration No. 38,312

Date: October 28, 2005

SMYRSKI LAW GROUP, A P.C.  
3310 Airport Avenue, S.W.  
Santa Monica, California 90405-6118  
Phone: 310.397.9118  
Fax: 310.397.9158

AMO0007 Request for Corrected Filing Receipt\_102605

# **EXHIBIT A**



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/619,088	07/14/2003	3763	2604	AMO0007	21	86	9

30438  
 SMYRSKI & LIVESAY, LLP  
 3310 AIRPORT AVENUE, SW  
 SANTA MONICA, CA 90405

CONFIRMATION NO. 4690  
 UPDATED FILING RECEIPT  
 \*OC000000014448744\*  
 \*OC000000014448744\*

Date Mailed: 11/24/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

## Applicant(s)

Mark E. Steen, Chino Hills, CA;  
 Kenneth E. Kadziauskas, Coto de Caza, CA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 10/08/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US10/619,088**

Projected Publication Date: 03/03/2005

Non-Publication Request: No

Early Publication Request: No

Title

**RECEIVED**  
 NOV 29 2004

BY: .....

## System and method for modulated surgical procedure irrigation and aspiration

## Preliminary Class

604

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**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). ~~The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.~~

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

# **EXHIBIT B**

DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

**SYSTEM AND METHOD FOR MODULATED SURGICAL PROCEDURE IRRIGATION AND ASPIRATION**

the specification of which

  X   is attached hereto.  
was filed on (MM/DD/YYYY) 07/14/2003 as  
United States Application Number 10/619,088  
or PCT International Application Number \_\_\_\_\_  
and was amended on (MM/DD/YYYY) \_\_\_\_\_  
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application. I do not know and do not believe that the claimed invention was in public use or on sale in the United States of America more than one year prior to this application, nor do I know or believe that the invention has been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Prior Foreign Application(s)</u>			<u>Priority Claimed</u>	
_____ (Number)	_____ (Country)	_____ (Foreign Filing Date - MM/DD/YYYY)	Yes	No
_____ (Number)	_____ (Country)	_____ (Foreign Filing Date - MM/DD/YYYY)	Yes	No
_____ (Number)	_____ (Country)	_____ (Foreign Filing Date - MM/DD/YYYY)	Yes	No

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

_____ Application Number	_____ (Filing Date – MM/DD/YYYY)
_____ Application Number	_____ (Filing Date – MM/DD/YYYY)

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

_____ Application Number	_____ (Filing Date – MM/DD/YYYY)	_____ Status -- patented, pending, abandoned
_____ Application Number	_____ (Filing Date – MM/DD/YYYY)	_____ Status -- patented, pending, abandoned



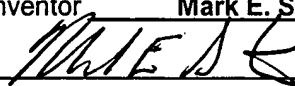
I hereby appoint the persons listed on Appendix A hereto (which is incorporated by reference and a part of this document) as my respective patent attorneys and patent agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

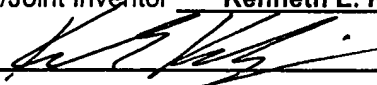
Send correspondence and direct telephone calls to:

Steven W. Smyrski, Esq.  
SMYRSKI & LIVESAY, LLP  
3310 Airport Avenue, SW  
Santa Monica, California 90405  
Phone: 310.397.9118  
Fax: 310.397.9158

PTO Customer Number 30438

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First/Sole Inventor Mark E. Steen  
Inventor's Signature  Date DEC 4, 2003  
Residence Chino Hills, California Citizenship U.S.A.  
(City, State) (Country)  
Post Office Address 16044 Medlar Lane  
Chino Hills, California 91709 USA

Full Name of Second/Joint Inventor Kenneth E. Kadziauskas  
Inventor's Signature  Date Nov. 20, 2003  
Residence Coto de Caza, California Citizenship U.S.A.  
(City, State) (Country)  
Post Office Address 24 Pamela Way  
Coto de Caza, California 92679 USA

APPENDIX A

Steven W. Smyrski and Paul Livesay, of SMYRSKI & LIVESAY, LLP, with offices located at 3310 Airport Avenue, SW, Santa Monica, California 90405, telephone 310.397.9118, and Peter J. Gluck, of ADVANCED MEDICAL OPTICS, INC., with offices located at 1700 E. St. Andrew Place, Santa Ana, California 92705, telephone (714) 247-8516; with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

## APPENDIX B

### Title 37, Code of Federal Regulations, Section 1.56 Duty to Disclose Information Material to Patentability

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.